

International Attempts at Regulating Privately Contracted Armed Guards on Board Ships: A Summary of the Seminar on the IMO's Revised Interim Guidance on Privately Contracted Armed Security Personnel

XU Peng^{*}

Abstract: On June 30, 2013, the seminar on IMO's Revised Interim Guidance on Privately Contracted Armed Security Personnel was held at Xiamen University by the South China Sea Institute of Xiamen University (XMU-SCSI) in conjunction with the Shanghai Jiao Tong University Center for Oceans Law and Policy, the Xiamen University Center for Oceans Policy and Law, and *China Oceans Law Review*. At the seminar, experts and scholars engaged in thorough discussions on the recently issued IMO Revised Interim Guidance to Shipowners, Ship Operators and Shipmasters on the Use of Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area, and the problems that may arise from its implementation. This article is a summary report of the seminar.

Key Words: Piracy; Privately Contracted Armed Security Personnel; Private Maritime Security Companies

In order to promote academic exchange and enhance coordination and cooperation on navigational safety across the Straits in the South China Sea, the Seminar on IMO's Revised Interim Guidance on Privately Contracted Armed Security Personnel was held on June 30, 2013 at Xiamen University by the South China Sea Institute of Xiamen University (XMU-SCSI) in conjunction with the Shanghai Jiao Tong Univer-

* XU Peng, J. S. D., Assistant Professor at the South China Sea Institute of Xiamen University. E-mail: xupeng731130@xmu.edu.cn. This paper is an interim result of "Research on the Strategy for Maintaining the Core National Interests of the South (China) Sea" (project approval No. : 10zd&013), a 2010 key project sponsored by the National Social Science Fund.

sity Center for Oceans Law and Policy, the Xiamen University Center for Oceans Policy and Law, and *China Oceans Law Review*.

More than twenty experts and scholars participated in the seminar, including Prof. Kuen-chen Fu, Assistant Prof. Lin Dafeng and Assistant Prof. Xu Peng of the XMU-SCSI, Associate Prof. Solomon Yang-Hong Chen of the National Kaohsiung Marine University, Associate Prof. Feng Liang of the China Center for Cooperative Innovation in Research on the South China Sea, Prof. Gao Bo of Jimei University School of Political Science and Law, Prof. Zhang Hui, Prof. Zhao Weidong and Lecturer Jiang Jiadong of the China Maritime Police Academy, Prof. Cai Congyan, Prof. Chen Huiping, Associate Prof. Chi Manjiao and Associate Prof. Chen Xifeng of Xiamen University School of Law, Associate Prof. Wang Zelin of Northwest University of Politics and Law, doctoral students Zhao Lijuan and Zheng Fan of Shanghai Jiao Tong University KoGuan Law School. Also present in the seminar were Mr. Chen Lufeng of the Xiamen Maritime Safety Administration, Mr. Zhang Xurong of the Ocean and Fisheries Bureau of Xiamen, Mr. Weng Guisun and Mr. Huang Mingjia of the Xiamen Maritime Comprehensive Administrative Law Enforcement Branch and Manager Yang Zhi of the Shipping Department of Xiamen Ocean Shipping Company. All these experts and scholars engaged in thorough discussions on the contents of the recently issued IMO Revised Interim Guidance to Shipowners, Ship Operators and Shipmasters on the Use of Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area (the IMO Guidance),¹ as well as the problems that may arise from its implementation.

I . Issuance of the IMO Guidance and Recent Changes in Pirate Activities

Prof. Kuen-chen Fu noted in his opening remarks that in the 1950s, many fishing vessels of China Mainland were armed, but this system was gradually given up due to some problems arising after the reform and opening-up. Now, with the emergence of special circumstances, he questioned how armed escort should be restored, and in practical operation, especially in navigation in the South China Sea, whether navigators should be allowed to be privately armed in addition to armed escort, and

¹ According to the IMO Guidance (MSC.1/Circ.1405/Rev.2), Privately Contracted Armed Security Personnel (PCASP) are armed employees of a private maritime security company (PMSC). Rather than armed security personnel individually contracted by a shipowner, they are dispatched to a contracted ship for armed escort.

how to operate such practice so as to make it effective, as well as its advantages and disadvantages.

A. Issuance of the IMO Guidance and Changes in Pirate Activities

Associate Prof. Solomon Yang-Hong Chen was the first to give a presentation at the seminar. His report, entitled “Arm Yourself or Get Robbed: Discussion on Pirates and Security Companies in the 21st Century in Light of the Current Situation Facing Taiwan’s Fleet”, opened with an introduction to the incident taking place in early May, in which a Taiwanese fishing vessel was shot by a Philippine military vessel, resulting in the death of a fisherman. Associate Prof. Chen called on the Taiwan authorities to enact a law to allow employment by vessels of privately armed security personnel to escort their navigation through high risk areas subject to the threat of pirates or illegal armed forces. Following a review of the hardships that Taiwanese merchant ships and fishing vessels had undergone, which included robbery, detainment and seizure, the report proposed to follow the IMO Revised Interim Guidance to Shipowners, Ship operators and Shipmasters on the Use of Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area when navigating through high risk areas.

Assistant Prof. Xu Peng, in his report on “New Developments of the IMO Guidance on Privately Contracted Armed Escort”, presented statistics of piracy across the world in the recent decade, which showed that the incidence of piracy increased year by year from 2006 to 2011, and only in the year of 2012 did the amount of pirate activities drop substantially. The statistics revealed the backdrop against which the number of Private Maritime Security Companies (PMSCs) had been rising sharply; that is to say, the increase of piracy had stimulated the demand of the shipping industry for Privately Contracted Armed Security Personnel (PCASP). It was under such circumstances that the IMO released a relevant guidance on privately contracted armed escort to give recommendations to flag States, port States, coastal States, shipping companies and PMSCs.

Associate Prof. Solomon Yang-Hong Chen analyzed the latest pirate activities in his report. According to statistics, from January 1 to June 15, 2013, 120 cases of pi-

racy were reported across the world, 7 of which occurred in the High Risk Area (HRA) ² of Somalia, while kidnapping occurred only in one incident. Therefore, it could be said that no major risk exists in this area at the moment. The contributing factors, according to Associate Prof. Chen, are joint naval patrol and escort of several States, heightened vigilance by the fleets and the use of PCASP following the Best Management Practices (BMP) ³ recommendations, and especially the changes in the domestic situation of Somalia, which have resulted in the rapid reduction of pirate attacks in the area. However, Associate Prof. Chen pointed out, the areas of pirate activities have started to expand beyond the sea area off the coast of Somalia. It is estimated that, in the abovementioned period, 22 cases of piracy occurred in the Gulf of Guinea, one of which involving kidnap. Piracy in this region which is close to an oil-producing but poor and political unstable country, is committed against a background different from that of Somalia, and is carried out by an organized group. Still, pirate activities currently occurred only in coastal areas.

In response, Associate Prof. Wang Zelin pointed out in his report "Privately Contracted Armed Security Personnel Combating Piracy and Law Enforcement at Sea" that with the expansion of the areas of pirate activities, the HRA is currently expanded to some waters of the Gulf of Guinea, mainly in the territorial sea, seaports, anchorage ground, the Niger Delta, inland riverways and port facilities of Nigeria and Benin.

For her part, Manager Yang Zhi gave an introduction to pirate activities. Somali pirates use various outlandish attack methods and their activities have expanded to coastal areas of India. In the past, shipmasters could carry guns, but they are not allowed to do so anymore. Currently, ships adopt various preventive measures and security plans to combat pirates, such as accelerating navigational speed and backing into watertight compartments. When PCASP are used, normally two to three guards are employed, whose responsibilities on board are very clearly defined in the employ-

² According to the provisions in the IMO document "Best Management Practices for Prevention against Somalia-Based Piracy" (MSC. 1/Circ. 1339), the High Risk Area defines itself by where pirate activity and/or attacks have taken place. For the purpose of Best Management Practices the High Risk Area is an area bounded by Suez and the Strait of Hormuz to the North, 10°S and 78°E.

³ The Best Management Practices (BMP) are advice on piracy prevention and combat given by IMO to shipping companies in the form of a guiding document to protect ships transiting the High Risk Area from the harms of piracy. The contents of the document keep being updated, and the latest version is the Best Management Practices for Prevention against Somalia-Based Piracy (MSC. 1/Circ. 1339) issued in September 2011, which is the fourth version, i. e., BMP4.

ment contracts signed with PMSCs, namely, the shipmaster has the absolute leadership and PCASP are also responsible for guiding the crew to adopt security measures, while tending to the crew's security problems. As firearms are on board, the ship generally sails along the coast, and in case of any problem, immediately enters the territorial sea of the coastal State to have the arms sealed off as per the requirements of the said State.

B. Contents of the IMO Guidance and Its Effectiveness

Assistant Prof. Xu Peng, in his report, introduced four documents recently issued or revised by the IMO involving the employment of armed security personnel to escort navigation. It is stressed in these documents that the use of PCASP should be the last resort after other self-defense measures have been adopted, and detailed recommendations are provided as to the scope of insurance, competencies and abilities of a professional PMSC, qualifications and training of PCASP, and procedures for carrying, transporting and using arms, among others.

Assistant Prof. Xu mentioned in his report that, considering the negative effect that may arise from the use of PMSC to escort navigation, the IMO emphasizes the following: the guiding documents are not legally binding and essentially are not a set of certifiable standards; it is strongly recommended that the crew be not equipped with firearms; PMSC escort should only be used as a special measure in HRAs of pirate activities, instead of being used on a regular basis; whether a ship is authorized to use PCASP should be decided by the flag State, taking into account the guiding documents and upon risk assessment and consultations with the shipping company concerned; the recommendations of the guiding documents do not mean that the use of PCASP is generally advisable; the shipmaster should get involved in the decision-making process (for the use of firearms), and should have absolute authority at any time; the use of PCASP should not be deemed as an alternative to the BMP, but only as an additional option.

With regard to this point, Prof. Cai Congyan pointed out that, out of consideration for the reputation of the organization and the need to bear responsibilities, the IMO is prudent when pronouncing itself on privately contracted armed maritime services, by clearly stating that the document is not legally binding, and only calling on member States to adopt domestic measures. However, the document still involves the Security Council in the peace maintenance tasks, as the IMO's authority does not cover the field of international security and peace.

Prof. Cai questioned whether the IMO had conducted sufficient investigation be-

fore its formulation of the documents. In response, Assistant Prof. Xu Peng and doctoral student Zhao Lijuan made some explanations. Before the formulation of a document, the IMO conducts basic investigations, by consulting with some NGOs and conducting questionnaire surveys with flag States and port States, which are taken as the basis for the formulation of such document. Additionally, some of the IMO standards are made via industry organizations. For example, BMP4 was prepared by the Shipowners' Association, and was originally an industry standard, which was issued and recommended to member States by the IMO. Associate Prof. Chi Manjiao also questioned the nature of IMO by pointing out that it is not an international organization in the modern sense, but rather a trade association organization, thus giving more consideration to cost in the formulation of documents.

C. Legal Basis and Military Forces for Combating Piracy

Associate Prof. Wang Zelin in his report introduced the provisions involving piracy contained in the 1958 Convention on the High Seas, the 1982 United Nations Convention on the Law of the Sea, and the 1988 Convention for the Suppression of Unlawful Activities against the Safety of Maritime Navigation, as well as relevant United Nations (UN) resolutions involving authorization of States' actions in Somali territorial seas. His conclusion was that it does not go against UN resolutions to call pirate activities those acts of violence, seizure, robbery, etc., taking place within the territorial seas.

The report introduced the maritime forces combating piracy in sea areas such as Somalia and the South China Sea. The forces in the Somali sea area include the EU's Operation Atalanta, the NATO-led Operation Ocean Shield, and the UN-authorized Combined Task Force 151, in which 25 countries (including China) participate and to which the United States has coordination responsibilities. In the South China Sea waters, an organization established on the basis of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia (2006), provides information on pirate activities for ships of various States. The Malacca Straits Patrols (MSP) Initiative, undertaken by Singapore, Malaysia and Indonesia as well as Thailand (which joined in 2008), implements the Malacca Strait Sea Patrol (MSSP), the "Eyes-in-the-Sky" (EiS) air patrols, and the Intelligence Exchange Group (IEG) in the Straits of Malacca.

D. Treatment of Pirates

Associate Prof. Chen Xifeng observed that combating piracy should rely on inter-governmental cooperation, while PCASP should provide only limited self-defense. This would entail the problem of the treatment of those pirates who are caught. Prof. Fu pointed out that piracy differed from armed robbery in that piracy must occur on the high seas. However, as piracy has yet to be classified as a criminal offense in China, in the event that any pirates are caught by China, the country will only have jurisdiction over them, but without the necessary tools to convict them. In response, Associate Prof. Chi supplied that it is provided in China's Criminal Law that China can prosecute crimes stipulated in international treaties concluded or acceded to by China. Though dual conviction is not suitable for piracy, the Chinese court may apply other charges. Nevertheless, Prof. Fu did not think that such practice is in line with the principle of legally prescribed punishment.

II. The Development and Management of PCASP on Board Ships

A. Development of PMSCs

Associate Prof. Solomon Yang-Hong Chen in his presentation adverted to the fact that most ocean shipping companies have not signed contracts with PMSCs. Whether such armed guards are used depends on risk awareness and risk assessment, that is, considering factors such as shipping routes, vessel types, speed of navigation and whether the shipowner is willing to provide funding. The probability of being robbed is not necessarily very high and the expenses for employing armed guards are not low, being estimated at USD 200 ~ 500,000 annually for each vessel, which is not a small amount for a commercial ship, and obviously too high for a fishing vessel.

However, Associate Prof. Chen also noted that shipping companies with higher risk awareness tend to use PCASP, such as those employing large container ships, because with PCASP such ships can take more economical routes to save oil, whereas without such personnel they would have to take rapid shipping routes consuming much oil. Moreover, with PCASP, ships are able to follow more direct shipping routes and do not have to detour. So far, no ships equipped with PCASP have been robbed by pirates. Nowadays, over 140 PMSCs are operating business in the designated HRAs around the world, and over 2,700 PCASP guards are performing tasks in these areas.

In addition, a PMSC has been established by Chinese, Huaxin Zhong'an Security Service Company (HXZA).⁴ During his presentation, Associate Prof. Chen humorously mentioned that it is not necessary to use PCASP in the South China Sea, as piracy in the region is less severe, and in case of kidnapping, the amount of bailout would be no higher than the expenses incurred for employing PCASP.

B. Legal Status, Rights and Obligations of PCASP

Doctoral student Zhao Lijuan in her report "Several Legal Issues Arising from the Use of Privately Contracted Armed Guards in Commercial Ships" observed that there are no clear prohibitive or affirmative provisions in international law as to whether commercial ships may employ PCASP for the purpose of combating pirates, as it remains a domestic law issue. Following a review of the Privateer System in history and commercial ship arming in time of war, the report maintained that in the event that a commercial ship is lawfully equipped with PCASP for purposes of self-defense, its legal status as a "commercial ship" should not be affected or changed by any unlawful act committed by such PCASP. The report held that the legal status of PCASP, while different from that of passengers or mercenaries, is still vague, and remains an issue of domestic law. At the same time, Zhao suggested that it would be more appropriate to describe them as "dispatch personnel" or "interim crew members".

Zhao's report argued that PCASP's obligations should follow three principles, self-defense, compliance with maritime order, and respect for human rights, namely, by avoiding the use of lethal weapons, using armed forces in line with the principle of proportionality, respecting the laws of port States and coastal States, respecting the shipmaster's supreme leadership, and implementing salvage at sea, among others; the private nature of PCASP determines that they do not have the right of criminal immunity, and should therefore bear the corresponding criminal or civil liabilities if any of their actions goes beyond the limit of self-defense or emergency risk aversion (though their civil liabilities could be settled through the purchase of insurance). Rights involving PCASP include the decision-making and recommendation rights re-

⁴ Huaxin Zhong'an Security Service Company (HXZA) was established in August 2004 and was one of the first security service companies obtaining administrative approval from the Beijing Municipal Public Security Bureau. Its scope of service covers maritime escort, but the weapons it deploys are not placed in China, but in Sri Lanka. These weapons get onboard in the sea area near this latter country, in order to circumvent domestic control on weapons. To expand its market, the company has much lower quotations than other companies. At <http://www.hcza.com/index.html>, 19 August 2013.

garding the extent and necessity of the use of firearms, and the rights of privately contracted security guards to medical treatment in case of injury or illness, and being returned if necessary, as well as the rights to accident insurance, third-party liability insurance or other insurances, as provided by PMSCs.

C. Management of Firearms on Board

Associate Prof. Wang Zelin presented the regulations in Egypt, which provide that arms must be handed out for safe keeping before entry into the country, and will not be handed back until the ship passes the Suez Canal. The regulations also state that PCASP and arms should be unloaded and loaded outside the territorial sea of the port State, neither personnel nor arms being allowed to enter the territorial sea or the port. Prof. Zhang Hui introduced China's regulations, which provide that foreign ships, upon entering China, should have their guns bonded and unloaded from the ship and left at China's border check point, to be returned when the ship leaves. Employment of PCASP is not allowed under Chinese law. Professional escort personnel of security escort companies may be equipped with firearms, the use of which is permitted only for public service upon the approval of security authorities. Units that may use firearms for public service have been defined by law, including important financial and warehousing units of the State.

D. The Issue of Military Escort on Board Ships

A recent case drew the attention of those participating in this seminar. An Italian ship had on board Marines to escort its navigation, who shot dead two fishermen in the Indian waters. Those involved in the case were arrested by the Indian police and sued, which gave rise to a diplomatic dispute between Italy and India. Questions were raised in the seminar as to how came that a shipping company could employ military personnel as escort. In reply, Prof. Fu and other scholars explained that in some small countries, the government dispatches military police on board for the purpose of protecting the ship while performing their tasks of law enforcement. The

*Dutch Government allows such practice, calling it Vessel Protection Detachments (VPDs).*⁵ Associate Prof. Chen Xifeng, on the other hand, deemed that the differentiation between public law and private law in this case is very complicated. The case under discussion differed from PCASP in that public service personnel were privately employed; thus the treatment of accidental injuries must also rely on relevant domestic law provisions.

III. Problems that May Arise from the Use of PCASP

Associate Prof. Solomon Yang-Hong Chen and Assistant Prof. Xu Peng in their presentations questioned the use of PCASP on board ships. In the event that PCASP are on board, where should they embark and disembark, since many countries do not allow commercial ships equipped with firearms to enter or exit their ports? Who can operate PMSCs, who can act as PCASP and who should have the authority to decide these issues? Should the mobilization of PCASP by PMSCs be subject to the approval of the flag State, those States by which the ships transit, the State where the PMSC is incorporated, or that of its seat of business? Are PSASP crew members? And if so, how should the relevant International Labor Organization (ILO) or IMO regulations apply to them? Will PCASP bring new risks to the crew and the ship? Are they under the command of the shipmaster or PMSC, and whose order should be obeyed in the use of firearms or in case of armed conflict? If any PCASP kill a person while executing their task, how should they bear liabilities? In the event PCASP injure any person off board, should the commercial ship and the government of the flag State bear liabilities? In case of any damage to PCASP, how shall the insurance company deal with it? Is it possible to equip fishing vessels with PCASP? What is the effect of PCASP on maritime law enforcement by flag States, port States or coastal States?

⁵ Governments are now privately hiring out their soldiers to provide security on board commercial ships. Such privately hired military teams are known as vessel protection detachments, or VPDs. Their role has been explained as “self-defence, liaison with law enforcement agencies, training and security vetting of personnel, the use of weapons, communications with sovereign authorities, record-taking and preservation of evidence.” The Russian Navy has employed them occasionally since 2009, and since 2010 European naval forces have sporadically offered VPDs to shipping companies and World Food Program ships in the piracy HRA. It is estimated that by the end of 2013, almost 2000 naval personnel may be operating in the Indian Ocean under private hire to protect commercial interests. The Netherlands, France, Spain, Belgium, and Italy all offer private shipping companies the opportunity to hire VPDs for use during transits of the Indian Ocean. See James Brown, *Pirates and Privateers; Managing the Indian Ocean's Private Security Boom*, Sydney: Lowy Institute for International Policy, 12 September 2012.

Should China enact a law to allow the establishment of PMSCs?

Prof. Cai thought that the use of PCASP may give rise to the issue whether the State should bear international liability for the private actions of its nationals. If the State allows the use of such personnel, consideration should be given as to whether the vessel private security industry is worthy of domestic legislation and to international practices in this regard.

Associate Prof. Chi held that the issue of international liability comes into play, and armed security personnel officially employed by the United States in Iraq is a much simpler issue than private employment of armed security personnel in the case at hand. Currently, pirates are not only present on the high seas, but even at ports, which means that they are no longer pirates in the traditional sense, and so the State would be exercising its policing power when dealing with them. Associate Prof. Chi then asked whether a ship should stop using its PCASP, upon entering a State's territorial sea, as well as how the coastal State should regard ships equipped with PCASP.

Prof. Fu noted that once a ship enters the territorial sea, the piracy issue will turn into one of domestic law. When PCASP are employed, their number should be minimized, while meeting the requirements of protection and complying with the proportionality principle. Prof. Chen Huiping deemed that the use of PCASP will involve the domestic laws of the flag State, the State of registry and the State to which the PCASP belong. Further, PCASP may enter another State's territory only through inter-state coordination and prior declaration. Therefore, what the IMO has done is very limited, and standards should be prepared addressing specific issues in the future. In terms of the use of firearms, Prof. Chen asked how to judge when arms may be deployed. And in case of a wrong judgment, how should the liabilities thereof be borne. Shall the State bear relevant liabilities? Such issues of domestic law should be dovetailed with international law.

IV. Applicability of PCASP in the South China Sea and China's Possible Response

Prof. Cai Congyan's analysis was from a privatization of maintenance of international peace and security perspective. With the changes in international relations, the problem of non-traditional security is becoming increasingly prominent, and the impact of such non-State actions (such as piracy) on international peace and security should be considered against the whole backdrop of changes in international law. The HRA referred to in the IMO Guidance is a specific area, where high sea and undisputed sea areas are easily defined. However, the limits of the high seas in the South

China Sea are yet to be defined. Under such circumstances, the use of PCASP would give rise to problems. As a result, the situation of the South China Sea would be more complicated.

In response, Prof. Fu observed that due to the large number of insular features in the South China Sea, a high sea area is unlikely to be found in the region. However, this does not affect the use of PCASP, as they are employed for the purpose of self-defense, irrelevant of location (territorial sea, high sea or exclusive economic zone). Apart from the territorial sea, the coastal State does not have jurisdiction over PCASP on board ships.

Prof. Gao Bo deemed that the use of PCASP on board ships will not be allowed in China, mainly because China has very strict control over firearms, and there is little likelihood that ships will be allowed to have firearms aboard. If arms are allowed to board a ship from a domestic port, a security issue will arise and arms smuggling will possibly ensue, among other problems. It is also very unlikely that PMSCs will be incorporated in China, and China will not show any significant response to the IMO Guidance. Currently, the PCASP used on board Chinese ships get on and off board overseas, and only foreign PMSCs are contracted.

To this, Prof. Feng Liang pointed out that China's response to the IMO Guidance may be conservative and reserved. With respect to the applicability of the PCASP scheme in the South China Sea, in particular, the Chinese government will not recommend its use, because that would be tantamount to tacitly admitting that the South China Sea is an HRA, and thus other States would have more excuse to intervene in the South China Sea. The internationalization of the South China Sea issue would therefore become even more severe, which would adversely affect regional security.

V. The Insurance Issue of PCASP on Board Ships

Regarding the response of the maritime insurance industry to the emergence of PCASP, Zhao Lijuan held in her presentation that the current maritime insurance framework is inadequate to cope with the problems arising from the increase in the use of PCASP. The underlying cause may be derived from the conflict between the tort liability law of personal law relations and the maritime law pertaining to commercial ships. That is to say, although a PMSC should bear the employer's liability for any misconduct of its PCASP, the shipowner should also bear the liabilities stipulated by maritime law due to his ownership of the ship. Some participants in the seminar thought that the employer's liabilities as established in the maritime law should apply

to the shipowner and the crew, and if PCASP are not crew members, the employer's liability should not apply.

Manager Yang Zhi submitted that ordinary insurance is not available for navigation in HRAs, and special insurance against war risks should be purchased, which increases the shipowner's expenses. Nowadays, pirates are very powerful and piracy has developed into an industry, with agents in the London market. In addition, information sharing has made robbery at sea very easy. Manager Yang stated that in application for insurance, at least three PCASP guards are required by the insurance company and a three-shift system should be implemented in order to get a discount. Due to the limited number of companies providing such insurance, the insurance company estimates the amount of shipowners requiring such service via its brokers and then asks for a price at the London market. In her reply to Prof. Fu's question on the jurisdiction over disputes that might arise thereof, Manager Yang explained that it is provided for in the insurance agreement that the court of jurisdiction shall be in London and British law the applicable law.

Zhao Lijuan pointed out in her presentation that PCASP have become important supplementary forces to national naval escort. The IMO has, under the prerequisite of not going against UNCLOS or the current mandatory conventions, adopted a soft law measure, that is, the issuance of a non-mandatory notification and guidance, to deal with problems such as the legitimacy of self-defense by having PCASP on board commercial ships, whether it is lawful for commercial ships to carry firearms, and regulation of PMSC and PCASP conducts. In this way, not only are the legislations of Member States and the practices of the shipping industry given due respect, but it promotes the method of attributing obligations to the respective shipowners and PMSCs, as well as allocating liabilities arising from PCASP behaviors by way of insurance.

Associate Prof. Chi pointed out that UNCLOS has very strict provisions on the crime of piracy, but after the introduction of many soft laws, the crime of piracy has been extended to shipyards and ports. The problem lies in the extent to which soft law can promote the development of this mechanism. Soft law may be easily executed if a consensus is reached in the industry; without States' participation, soft law will appear weak in face of States as it does not have binding force.

Prof. Fu also expressed his idea on soft laws, which he thought very appropriate for laying down private rights, such as industry standards, industry norms and public order and good customary practices, but have very limited force in the field of public law. The IMO does not have the power of legislation; it is only capable of providing guidance. Therefore, the hard rules will have to be found in the law of the sea and subsequent case judgments.

VI. Conclusion

The seminar was called to an end amidst the applauses of the participants after nearly four hours of presentations and heated discussions. Participants in this seminar all rendered positive comments on the importance of the IMO guiding documents, while identifying many problems therein. To borrow a remark by Prof. Fu in his closing address, while the IMO guiding documents are becoming more and more important, there will be more rather than fewer tensions in the implementation of these documents.

(Translator: CHEN Xiaoshuang
English editor: Adrian Cisneros-Aguilar)